

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

OMAR STRATMAN,
Plaintiff,
v.
LEISNOI, INC., KONIAG, INC., and
DIRK KEMPTHORNE, Secretary of the
Interior,
Defendants,

KONIAG, INC.,
Counter-claimant,
v.
OMAR STRATMAN,
Counter-claimed
Defendant.

Case No.: 3:02-cv-0290 (JKS)

THIRD AMENDED COMPLAINT

COMES COMES NOW Omar Stratman, by and through his attorneys of COMES COMES NOW Omar Stratman, of Michael J. of Michael J. Schneider, P.C., and complains and alleges against Defendants, and them, as follows:

Introduction

1. This action is an AdThis action is an Administrative Procedures Department of Interior's decision to certifyDepartment Village, and constitutes a continuation of the proceedings in Village, and constitutes Interior, Leisnoi, Inc., and Koniag, Interior, Leisnoi, below, that action culminated in an Orderbelow, that action culminated in

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

LandLand Appeals (hereinafter "IBLA") to adjudicate Stratman's challenge and redetermine Stratman's challenge remanded proceedings, which included a formal adjudicatory hearing in which it determined that Leisnoi was not qualified for certification as an have now been completed. In accordance with thehave now been completed. In accordance with Court, this new action has been filed in order to bring Stratman's case back before Court for final determination of his APA claim.

General Allegations

2. Omar Stratman (hereinafter "Stratman") is an Island, State of Alaska, within the District of Alaska.
3. Dirk Kempthorne is the current Secretary of the Department (hereinafter "the Department").
4. Leisnoi, Inc. (hereinafter "Leisnoi") is a consequence of the Department's certification of the alleged village as an eligible Native Village under Section 11(b)(3) as an eligible Native Village under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1610(b)(3).
5. Koniag, Inc. (hereinafter "Koniag") is a Native Regional Corporation created by the ANCSA for Native villages in the Kodiak archipelago, in which Leisnoi is a member.
6. This Court has jurisdiction, and venue is proper, pursuant to 28 U.S.C. § 1331.
7. The Court has the authority to review the Department's decision and to grant the relief requested herein, pursuant to 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 1651 (injunctive relief).

MICHAEL SCHNEIDER, P.C.
28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 1651 (injunctive relief).

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

The Proceedings in Stratman I

8. In 1973, Leisnoi filed an application with the Department for an 1973, Leisnoi file
eligibility to receive ANCSA benefits as eligibility to receive ANCSA benefits as an u
Section 11(b)(3), 43 U.S.C. § 1610(b)(3). In Section 11(b)(3), 43 U.S.C. § 1610(b)(3)
and the Department's regulations, and the Department's regulations, the and t
regarding Leisnoi's application and its qualifications for eligibi
issued a decision finding Leisnoi to be qualified for
Village. Notice of Village. Notice of thVillage. Notice of the Department's decis
and several Alaska newspapers. Following and several Alaska newspapers. Following
had been filed by other parties, the Department had been filed by other p
9, 1974. On the same date, the 9, 1974. On the same date, the Department issued a Cert
Leisnoi as an eligible Leisnoi as an eligible Native Village. Leisnoi as an eligible Nat
its proceedings to Stratman, even though Stratman held record interests, as a federal
grazing leaseholder, grazing leaseholder, ingrazing leaseholder, in some of the land
not receive actual notice of not receive actual notice of the pendency of
file a protest or participate in any administrative proceedings relating to Lefile a pr
application.
9. As will appear belAs will appear below, Leisnoi's certification as an ANCSA
contrary to law. contrary to law. As contrary to law. As a direct and proximate res
land, money, and other benefits to which it was not entitled.
10. To the best of Mr. Stratman's knoTo the best of Mr. Stratman's knowledTo the bes

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

11. In July 1976, Stratman (and other plaintiffs) filed in July 1976, Stratman (and other plaintiffs) filed in the District of Alaska challenging the Court in the District of Alaska challenging the status of Leisnoi as an eligible Native Village. Stratman vs. Secretary of Interior, Leisnoi, Inc., and Koniag, Inc., Case No. A76-132 CV (JKS) (hereinafter Stratman I). The complaint in Stratman I alleged that Leisnoi did not meet ANCSA's requirements for certification as an eligible Native Village, that the Department had conducted an investigation regarding Leisnoi, and investigation regarding Leisnoi, that Leisnoi was wrongfully certified as an eligible Native Village. The court vacated Leisnoi's certification as an eligible Native Village, enjoining the Federal government from issuing any land patents to Leisnoi, and declaring null and void any conveyances. A true and correct copy of the First Amended Complaint in Stratman I is attached as Exhibit 1.

12. The litigation in Stratman I wound through a number of appeals, a failed settlement, and ultimately, an order remanding proceedings to adjudicate Stratman's challenge to the court's eligibility determination. See orders at Docket 240, orders at Docket 240, Docket 292 (p. 3), Docket 300. A true and correct copy of the District Court's decision is attached hereto as Exhibit 2.

13. On October 26, 1978, the District Court dismissed the complaint in Stratman I for lack of standing. MICHAEL STRATMAN, et al. v. LEISNOI, INC., et al., No. 3:02-cv-00290-JKS (D. Alaska, Oct. 26, 1978).

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

exhaustexhaust their administexhaust their administrative exhaust their administrative r
whichwhich issued a reported decisionwhich issued a reported decision in Stratman v. Stratman
otherother things, the Ninth Circuit determined that Stratman had standingthat Stratman h
actionaction as a recreational user of the landsaction as a recreational user of the lands tha
Id. at 1324. The Cou. The Court also deter. The Court also determined that Stratman
receivereceive actual notice from the Department of the pendency of its procreceiv
regardingregarding Leisnoi sregarding Leisnoi s regarding Leisnoi s application for eligibi
beenbeen originally entitled to notice and an opportunity to participate in the administrative
proceedings. Id. at 1326. After noting that Stratman was seeking a trial *de novo* in
thethe Distrthe District Court tthe District Court to determine the issue of Leisnoi s eligibi
CircuitCircuit remanded, instructing the District Court to apply the princCircuit remanded
andand determine whether Stratman should be allowed to litigate [his challengand det
judicial forum. Id. at 1326.

14. InIn 1982,In 1982, following the Ninth Circuit s decisionIn 1982, following the Ninth Circuit
intointo a settlement and ainto a settlement and a stipulated dismissal. At the timeinto a set
KoniagKoniag had merged into a single corporation. Koniag had merged into a single
agreement,agreement, the merged Leisnoi/Koniag agreed to sellagreement, the merged Le
surroundingsurrounding his ransurrounding his ranch fromsurrounding his ranch from
transactiontransaction was to take place within thirtydays following Leisnoi/Koniag s receipt
landland patents.land patents. On November 21, 1985, the land patents were issued. Fou
LeisnoiLeisnoi repudiated its obligations under theLeisnoi repudiated its obligations under
MICHAEL not bound by the not bound by the settlenot bound by the settlement agreement be

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

15. On March 5, 1993, Stratman filed a motion to dismiss the case. The District Court denied the motion. Stratman appealed to the Ninth Circuit. In a memorandum decision issued on September 1, 1994, the Ninth Circuit reversed and remanded with instructions for the District Court to vacate the judgment of dismissal and reopen the action. A copy of the Ninth Circuit's decision is attached as Exhibit C. The District Court entered an order reopening the action.

16. On May 11, 1995, the District Court issued a Scheduling Order (Docket No. 95-11-00001). It identified five threshold issues to be briefed by the parties. If the court did not resolve the action on one of the five threshold issues, it would remand the matter to the Interior Board of Land Appeals for further proceedings. Leisnoi's eligibility was one of the threshold issues. Included in the threshold issues was whether Stratman was barred from filing suit due to his failure to exhaust administrative remedies. Congress had legislatively ratified Leisnoi's status as an eligible Native American by enacting the provisions in the Alaska Native Claims Settlement Act (ANILCA). A true Conservation

MICHAEL J. BISCHOFF HERZOG, Esq., Exhibit 4.

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

17. On September 13, 1995, the District Court issued issues (Docket 292). After disposing of the issues (Docket 292), Stratman's action was not barred for failure to exhaust his administrative remedies based on the Department's failure to provide administrative remedies. The Court ruled that IBLA for additional proceedings in order to adjudicate IBLA. The Court reasoned that this could provide the court the benefit of administrative remedies, and give the court the benefit of determining Stratman's claim for judgment. Whether Congress legislatively ratified Leisnoi's claim for judgment by enacting ANILCA Section 1427 should also be remanded. The decision concluded with initial determination. The decision directed the Department for consideration not inconsistent with the Court's decision. A correct copy of the District Court's decision is attached hereto as Exhibit 5.

18. On November 21, 1995, the District Court entered a subsequent order denying two subsequent motions. The order concluded by entering judgment remanding the case to the Interior Board of Land Appeals (IBLA) in accordance with the Court's order of September 13, 1995. A formal judgment was entered remanding the case to IBLA. True, a formal judgment was entered remanding the case to IBLA. The formal judgment was of the District Court's order and judgment of remand are attached hereto as Docket 309 and 310, respectively.)

MICHAEL J. SCHNEIDER, P.C.

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

19. On September 25, 1996, the District Court granted Stratman's motion to preliminarily enjoin Leisnoi from logging timber under ANCSA pending the determination of its judgment of remand. Stratman indicated that its judgment had been intended to indicate rather than retaining jurisdiction, and that Stratman sought the District Court for final determination, after the completion of proceedings, by filing a new action. A copy of the order is attached hereto as Exhibit 8. (Docket 329.)

The Remanded Agency Proceedings

MICHAEL responded by briefs.

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

23. On October 13, 1999, the ALJ issued a one-hundred-page decision in which he determined that Leisnoi did not satisfy ANCSA's requirements as an unlisted Native Village. Among other things, the ALJ found: 1) that Leisnoi did not have 25 or more Native residents on April 1, 1970; 2) that Leisnoi did not have 25 or more Native identifiable physical locations evidenced by occupancy consistent with identifiable cultural patterns and life-style; 3) that Leisnoi used the alleged village during 1970 as a place of time; and 4) that Leisnoi was not unoccupied in 1970 due to one or more acts of God or governmental authority occurring within the preceding ten years. A true and correct copy of the ALJ's Recommended Decision is attached hereto as Exhibit 9.

24. The parties were accorded the opportunity to file a written response to the Recommended Decision, and to brief any party on the issue of whether Congress intended to legislate the issue of whether Leisnoi is a Native Village by enacting ANILCA Section 1427.

25. On October 29, 2002, IBLA issued a reported decision, Stratman v. Leisnoi et al. In this decision, the Board adopted the IBLA's decision, stating that [w]e have reviewed the objections to the IBLA's decision filed by the parties and we find no reason to overturn the IBLA's decision with which we agree. IBLA at 157. A true and correct copy of this decision is attached hereto as Exhibit 10.

MICHAEL J. SCHNEIDER, P.C.
 MICHAEL J. SCHNEIDER, P.C.
 MICHAEL J. SCHNEIDER, P.C.

**THIRD AMENDED COMPLAINT
 STRATMAN V. LEISNOI ET AL.
 CASE NO. 3:02-cv-0290 (JKS)**

Claim for Relief

29. This action constitutes a continuation of the pleadings, proceedings, and orders issued therein remain the same as in this action, under the doctrine of the law of the case.

30. As a result of the Department's actions, Leisnoi's eligibility in the remanded agency proceeding

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

decision decision now constitutes the Department's new decision now constitutes the Department's original decision regarding Leisnoi's eligibility. Determining Stratman's claim for judicial relief. Determining Stratman's claim for the parties and the court, and is only subject to the parties and the court, and is only provided in the Administrative Procedure Act, 5 U.S.C. § 706.

31. Stratman is entitled to a judgment affirming IBLA's decision.
32. Stratman is entitled to a judgment enforcing IBLA's decision.
33. Stratman is entitled to a judgment setting aside the Department's certification of Leisnoi as an eligible Native Village based on Leisnoi's eligibility.
34. Stratman is entitled to a judgment restoring the United States title to Leisnoi where Leisnoi were conveyed to Leisnoi under ANCSA, were conveyed to Leisnoi have been conferred on Leisnoi or Koniag as have been conferred on an eligible Native Village.
35. Stratman is entitled to an award of his costs and expenses incurred in this action, including the costs and fees he incurred in this action, including Stratman I, in the remanded agency proceedings, and in other, in the remanded that were related to his case. Such award is authorized by the Act, 28 U.S.C. § 2412.

WHEREFORE, Stratman prays for relief as follows:

1. For a Judgment affirming IBLA's decision that Leisnoi did not satisfy ANCSA's requirements for certification as an eligible Native Village;

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

2. For a Judgment setting aside the Department's certification of Native Village;
3. For a Judgment vacating any land patents issued of Leisnoi's certification as an eligible Native Village;
4. For a Judgment awarding the United States of America, or the value of any benefit received by Leisnoi and/or the value of any benefit received Leisnoi's certification as an eligible Native Village;
5. For a Judgment imposing a constructive trust for the benefit of all assets acquired by Leisnoi and all assets acquired by Leisnoi and Koniag a all assets eligible Native Village;
6. For a Judgment awarding Stratman his connection with this action, including his costs and fees incurred in the proceedings in Stratman I, in the remanded agency proceedings, and in the remanded agency proceedings that were related to his case.
7. For such other and further relief as the Court deems appropriate.

RESPECTFULLY submitted this 16th day of February, 2007.

s/Michael J. Schneider
Law Offices of Michael J. Schneider, P.C.
880 N Street, Suite 202
Anchorage, AK 99501
Phone: (907) 277-9306
Fax: (907) 274-8201
E-mail: mjspc@gci.net
Alaska Bar No. 7510088

MICHAEL J. SCHNEIDER, P.C.

**THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)**

CERTIFICATE OF SERVICE

I hereby certify that ***OMAR STRATMAN S***
THIRD AMENDED COMPLAINT was served electronically
on the 16th day of February, 2007, on Bruce M. Landon,
R. Collin Middleton, and John R. Fitzgerald.

s/Michael J. Schneider

MICHAEL J. SCHNEIDER, P.C.
ATTORNEY IN CHARGE

THIRD AMENDED COMPLAINT
STRATMAN V. LEISNOI ET AL.
CASE NO. 3:02-cv-0290 (JKS)